

REMARKS

Claims 1-46 are pending. By this Amendment, claims 1, 19, 32 and 43 are amended, and new claims 44-46 are added.

The telephone interview between Examiner Shriver and Applicant's representative Mr. Hunt on March 10, 2005 is made of record. The substance of discussions during the telephone interview is incorporated into the following remarks. New claims 44-46 are added in response to the observation by the Examiner during the interview that the cited art does not teach or suggest a highback that does not extend beyond a toe end of the binding when the highback is in a folded position, in combination with other features of the claims from which claims 44-46 depend.

I. Claims 19-31, 43 and 45 are Allowable

Item 7 of the Office Action indicates that claims 12-17, 28-32 and 40-43 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant gratefully acknowledges the Examiner's indication of allowable subject matter. Claim 19 is amended to incorporate the subject matter of allowable claim 32, and allowable claim 43 is amended to be in independent form incorporating all of the features of claim 33. Accordingly, Applicant submits that claims 19 and 43, and claims 20-31 and 45 which depend from claim 19 are allowable.

II. Claims 1-18, 32-42, 44 and 46 Define Patentable Subject Matter

Item 4 of the Office Action rejects claims 1 and 9-11 under 35 U.S.C. §102(b) over U.S. Patent 6,394,484 to Maravetz et al. Item 6 of the Office Action rejects claims 2-4, 6, 18-21, 26, 27 and 33-35 under 35 U.S.C. §103(a) over Maravetz. These rejections are respectfully traversed.

A. Claims 1-5, 7-18, 32 and 44

In discussing claim 1 during the telephone interview, Applicant's representative Mr. Hunt illuminated on some information provided in the Background section of this application. Specifically, Mr. Hunt explained that snowboard rental shops typically include snowboard racks for storing boards with both step-in and strap bindings. In the past, snowboards with mounted step-in bindings typically had an overall height (a distance from the bottom of the board to the highest point on the bindings above the board top surface) of about 3 inches. Thus, racks for boards with step-in bindings were made to provide approximately a 3 inch spacing between adjacent boards. In contrast, boards with strap bindings typically have an overall height of about 4 inches or more. Thus, rental shops have included separate racks for boards with strap bindings that provide for spacing between adjacent boards of 4 inches or more.

The decline in popularity of step-in bindings, at least in the rental market, has resulted in rental shops having fewer boards with step-in bindings. Thus, these shops were left with large numbers of empty step-in board racks since the overall height of strap bindings in the past precluded the placement of boards with strap bindings in racks made to accommodate step-in bindings. As a result, there was a need in the industry for strap bindings that could be configured to have an overall height such that the bindings, when secured to a snowboard, would allow placement of the board in existing step-in board racks. However, prior to this application, no such strap bindings were available.

Independent claim 1 recites that a rear support member, including a highback, is moveable between a riding position and a folded position in which all portions of the rear support member are positioned at a height from the bottom surface of the base that is less than a height of an uppermost portion of the heel hoop from the bottom surface of the base. One embodiment of this arrangement may be seen, for example, in Fig. 3 of this application. As was discussed during the interview, one of the challenges in arranging a strap binding so as to reduce its overall height when the highback is folded was to reduce the profile of the highback (which may also include a forward lean adjuster or other elements secured to the highback).

The Office Action indicates that Maravetz discloses the claimed arrangement and includes a “modified Fig. 4” of Maravetz in which Maravetz’ Fig. 4 was photocopied, and a copy of the rotatable highback was cut out, and then placed on the drawing in a folded orientation. Based on the results of this manipulation of Maravetz’ Fig. 4, the Office Action concludes that Maravetz discloses a foldable highback that may be positioned entirely below an uppermost portion of a heel hoop when the highback is in a folded position.

As was discussed during the interview, and as is admitted in Item 6 of the Office Action, the drawings in Maravetz are not to scale. As such, the drawings in Maravetz do not necessarily show the precise relative sizes and/or arrangements of the highback, baseplate and other portions of the depicted binding. See, for example, MPEP §2126 which states “when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value.” (See Hockerson-Halberstadt, Inc. v. Avia Group Int’l., 55 USPQ 2d 1487-1491 (Fed. Cir. 2000))

§2126 of the MPEP also states that the description of the article pictured, e.g., in a patent, can be relied on in combination with the drawings for what they would reasonably teach one of ordinary skill in the art. Maravetz is entirely silent regarding whether the relative sizes, shapes, or other features of the highback, baseplate and heel hoop depicted in the drawings are suitable for an analysis like that performed with the respect to the “modified Fig. 4.” That is, the disclosure of Maravetz is not relevant to the relative sizes, positions and/or other features of the depicted highback, baseplate and/or heel hoop, mainly because the various inventive features described in Maravetz are unrelated to these features of the binding. Since Maravetz makes no disclosure in this regard, the use of its drawings in performing an analysis such as that shown in the “modified Fig. 4” is inappropriate. Accordingly, Maravetz would not teach one of ordinary skill in the art that the disclosed binding includes a rear support member positionable in a folded position in which all portions of the rear support member are positioned at height from the bottom surface of the binding base that is less than a height of the uppermost portion of the heel hoop.

In view of the above, Maravetz does not teach all of the features of claim 1. Thus, claim 1, and claims 2-5, 7-18, 32 and 44 which depend from claim 1, are allowable.

B. Claims 6, 33-42 and 46

Claim 33 recites a snowboard binding in which all portions of the highback and heel hoop are positioned within a distance of at most 3 inches from the bottom surface of the base when the highback is in a folded position. As discussed above, the drawings of Maravetz are not to scale and there is no disclosure in Maravetz regarding an overall height of the disclosed binding with the highback in a folded position. In fact, bindings like that shown in Maravetz in which the pivot point for the highback is located at approximately mid-foot typically have a relatively high profile when in the folded position. If prior bindings like that disclosed in Maravetz had the claimed overall height of at most 3 inches when the highback is in a folded position, rental shops could have readily incorporated these bindings with boards and used them with their existing step-in binding board racks. However, that was not the case.

Further, there is no teaching or suggestion in Maravetz that the height of a binding when the highback is in a folded position is at all important or should be minimized. Accordingly, Maravetz would not have provided any motivation to one in the skill of the art to modify the disclosed binding such that it would have the claimed features.

In view of the foregoing, Applicant submits that claim 33, and claims 6, 34-42 and 46 which depend from claim 33, are allowable.

III. The Informality in Claim 1 is Corrected

Item 2 of the Office Action objects to claim 1 because the word “a” in line 4 should be changed to “said” or “the.” Claim 1 has been amended to change the word “a” to “the,” thus obviating this objection.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 23/2825, under Order No. B0932.70221US00 from which the undersigned is authorized to draw.

Dated: March 14, 2005

Respectfully submitted,

By 

Robert E. Hunt, Reg. No.: 39, 231
WOLF, GREENFIELD & SACKS, PC
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210-2206
(617) 646-8000
(617) 646-8646 (Fax)